

March 2, 2006

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Re: Governor's Task Force on Waste Materials
Recovery and Disposal

Dear Mr. Vogel:

Our firm represented the National Solid Wastes Management Association in *National Solid Wastes Management Association v. Bazzell*, No. 01-C-688-S (W.D. Wisc.), a case discussed by Assistant Attorney General JoAnne Kloppenburg of the Wisconsin Department of Justice at the October 19, 2005, meeting of the Governor's Task Force on Waste Materials Recovery and Disposal. I write to correct a misimpression conveyed in the meeting minutes summarizing Ms. Kloppenburg's presentation.

The minutes report that the federal court challenge to Wisconsin's \$3 per ton tipping fee "failed in District Court because [the fee] did not discriminate between in-state and out-of-state waste and because the revenues raised by the fee were used for a purpose related to the source of the revenue, i.e., recycling which prolongs the life of Wisconsin landfills."


In fact, the ruling in that case was quite narrow. The federal district court ruled that the tipping fee is a state tax subject to challenge in state, rather than federal, court under the Tax Injunction Act, 28 U.S.C. § 1341. Thus, the court held that it lacked jurisdiction to reach the merits of the plaintiff's claim and dismissed the case without prejudice. Accordingly, the court did not rule on the plaintiff's claim that the tipping fee unconstitutionally discriminated against interstate trade in violation of the Commerce Clause of the U.S. Constitution.

Moreover, the court's jurisdictional ruling was specifically premised on the court's conclusion that the tipping fee was "designed to raise a substantial amount of revenue for a distinct public use *unrelated* to the regulation of those assessed."

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I trust that this information is helpful to the Task Force and thank you for this opportunity to contribute to your deliberations.

Sincerely,

A handwritten signature in blue ink that reads "Evan M. Tager". The signature is fluid and cursive, with the first name "Evan" and last name "Tager" clearly legible, and "M." as a middle initial.

Evan M. Tager